

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

LUCIEN L. BOYER,)	
)	
Plaintiff,)	2:04-cv-02029 JWS (CRP)
)	
vs.)	ORDER FROM CHAMBERS
)	
DORA SCHRIRO, <i>et al.</i>,)	[Re: Report and Recommendation]
)	
Defendant.)	
)	

I. MATTER PRESENTED

At docket 8, Magistrate Judge Charles R. Pyle filed his report and recommendation, recommending that the court dismiss plaintiff's first amended complaint without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. Plaintiff did not file any objections to the report and recommendation.

II. STANDARD OF REVIEW

The district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."¹ When reviewing a magistrate judge's report and recommendation, the district court reviews *de novo* conclusions of

¹28 U.S.C. § 636(b)(1).

law² and findings of fact to which parties object.³ The court reviews for clear error uncontested findings of fact.⁴

III. BACKGROUND

On September 27, 2004, plaintiff Lucien Boyer, who at the time was incarcerated, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983.⁵ By order dated November 23, 2004, the court granted plaintiff's application to proceed *in forma pauperis* and directed plaintiff to immediately advise the court of any change of address.⁶ The court warned plaintiff that "[f]ailure to timely file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure."⁷

Plaintiff subsequently filed a first amended complaint,⁸ after which the court entered an order directing the Clerk of the Court to mail a service packet to plaintiff.⁹ On November 28, 2005, the Clerk of the Court mailed a service packet to plaintiff, which was returned to the court as undeliverable with the notation that plaintiff was no longer

²*Barilla v. Ervin*, 886 F.3d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

³28 U.S.C. § 636(b)(1).

⁴*Taberer v. Armstrong World Indus., Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

⁵Doc. 1.

⁶Doc. 3.

⁷*Id.* at 6-7.

⁸Doc. 5.

⁹Doc. 6.

in custody.¹⁰ To date, plaintiff has not filed a notice of change of address, nor in any other way notified the court of plaintiff's current address.

IV. DISCUSSION

Having reviewed the magistrate judge's report and recommendation under the standard of review articulated above, the court agrees with the magistrate judge's findings of fact and conclusions of law. Accordingly, the court **ACCEPTS** the report and recommendation at docket 8. Plaintiff's first amended complaint at docket 5 is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

DATED at Anchorage, Alaska, this 6th day of June 2006.

/s/
JOHN W. SEDWICK
UNITED STATES DISTRICT COURT JUDGE

¹⁰Doc. 7.